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STANDING FINANCIAL ORDERS

FOREWORD

NHS Trusts need to agree Standing Orders (SOs) for the regulation of their proceedings and business. Regulation 19 of the NHS Trusts (Membership and Procedure) Regulations 1990 (SI(1990)2024) requires the meetings and proceedings of an NHS Trust to be conducted in accordance with the rules set out in the Schedule to those Regulations and with Standing Orders made under regulation 19(2). The Codes of Conduct and Accountability (EL(94)40) require Boards to adopt schedules of reservation of powers and delegation of powers.

The above documents, together with Standing Financial Instructions, provide a regulatory framework for the business conduct of the Trust. They fulfil the dual role of protecting the Trust's interests and protecting staff from any possible accusation that they have acted less than properly.

The Standing Orders, Delegated Powers and Standing Financial Instructions provide a comprehensive business framework. All executive and non-executive directors, and all relevant members of staff, should be aware of the existence of these documents and, where necessary, be familiar with the detailed provisions.

The Standing Orders incorporate provisions of the National Health Service Trusts (Membership and Procedure) Regulations 1990 SI(1990)2024 as amended by SI(1990)2160 and SI(1996); [*such provisions are indicated in italics and are not subject to suspension under SO 3.32*].

INTRODUCTION

Statutory Framework

The Portsmouth Hospitals NHS Trust (the Trust) is a body corporate, which was established under the SI 1992 (2506) National Health Service Trust (Establishment) Order 1992 (the Establishment Order).

The principal place of business of the Trust is Queen Alexandra Hospital, Cosham.

NHS Trusts are governed by statute, mainly the National Health Service and Community Care Act 1990 (NHS & CC Act 1990) and the National Health Service Act 1977 (NHS Act 1977).

The statutory functions conferred on the Trust are set out in the NHS & CC Act 1990 (Schedule 2) and in the Trust's Establishment Order.

As a body corporate the Trust has specific powers to contract in its own name and to act as a corporate Trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable as well as to the Secretary of State for Health. The Trust also has a common law duty as a bailee for patients' property held by the Trust on behalf of patients.

The Membership and Procedure Regulations 1990 (SI(1990) 2024) requires the Trust to adopt Standing Orders (SOs) for the regulation of its proceedings and business. The "Directions on Financial Management in England" issued under HSG(96)12 in 1996, require Health Authorities to adopt Standing Financial Instructions (SFIs) setting out the responsibilities of individuals. These directions are not mandatory on NHS Trusts but Trusts are asked to observe them and, as a matter of good practice, ensure they meet the standards they lay down.

NHS Framework

In addition to the statutory requirements the Secretary of State through the Department of Health issues further requirements and guidance as HSC's (previously ELs, FDLs, HSGs etc.) Many of these are contained within the Corporate Governance Framework Manual (Finance). The manual also contains a list of the main statutes and legislation relevant to NHS Trusts.

Included in the Manual are the Codes of Conduct and Accountability for NHS Boards. The Code of Accountability requires that, inter alia, Boards draw up a schedule of decisions reserved to the Board, and ensure that management arrangements are in place to enable responsibility to be clearly delegated to senior executives (a scheme of delegation). The code also requires the establishment of audit and remuneration committees with formally agreed terms of reference. The Code of Conduct makes various requirements concerning possible conflicts of interest of Board directors.

Also included in the Corporate Governance Framework Manual (Finance) is the Code of Practice on Openness in the NHS, which sets out the requirements for public access to information on the NHS.

Delegation of Powers

Under the Standing Orders relating to the Arrangements for the Exercise of Functions (SO 4) the Board exercises its powers to make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee appointed by virtue of SO 5 or by an officer of the Trust, in each case subject to such restrictions and conditions as the Board thinks fit or as the Secretary of State may direct. Delegated Powers are covered in a separate document (Reservation of Powers to the Board and Delegation of Powers). That document has effect as if incorporated into the Standing Orders.

1 INTERPRETATION

- 1.1 Save as permitted by law, at any meeting the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders on which he should be advised by the Chief Executive.
- 1.2 Any expression to which a meaning is given in the Health Service Acts or in the Regulations or Orders made under the Acts shall have the same meaning in this interpretation and in addition:

"ACCOUNTABLE OFFICER" shall be the Officer responsible and accountable for funds entrusted to the Trust. He shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.

"TRUST" means the Portsmouth Hospitals NHS Trust

"BOARD" shall mean the Chairman and Non-Executive Directors, appointed by the Secretary of State, and the Executive Directors appointed by the relevant committee of the Trust.

"BUDGET" shall mean a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust

"CHAIRMAN" is the person appointed by the Secretary of State for Health to lead the Board and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The title, "the Chairman of the Trust" shall be deemed to include the Deputy-chairman of the Trust if the Chairman is absent from the meeting or is otherwise unavailable.

"CHIEF EXECUTIVE" shall mean the chief officer of the Trust.

"COMMITTEE" shall mean a committee, group, or team appointed by the Trust.

"COMMITTEE MEMBERS" shall be persons formally appointed by the Trust to sit on or to chair specific committees.

"DIRECTOR" shall mean a person appointed as a director in accordance with the Membership and Procedure Regulations and includes the Chairman.

"DIRECTOR OF FINANCE" shall mean the chief finance officer of the Trust.

"ESTABLISHMENT ORDER" shall mean the Portsmouth Hospitals National Health Service Trust (Establishment) Order 1992 (SI(1992)2506).

"FUNDS HELD ON TRUST" shall mean those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under Sch 2 Part II para 16.1c NHS & Community Care Act 1990. Such funds may or may not be charitable.

"MEMBERSHIP AND PROCEDURE REGULATIONS" shall mean the National Health Service Trust (Membership and Procedure) Regulations 1990 (SI(1990) 2024).

"MOTION" means a formal proposition to be discussed and voted on during the course of a meeting.

"NOMINATED OFFICER" means an officer charged with the responsibility of discharging specific tasks within SOs and SFIs.

"OFFICER" means an employee of the Trust.

"SECRETARY" means a person appointed by the Trust to act independently of the Board and monitor the Trust's compliance with the law, SOs, and observance of NHS Executive guidance.

"SFIs" means Standing Financial Instructions.

"SOs" means Standing Orders.

"DEPUTY-CHAIRMAN" means the non-executive director appointed by the Trust to take on the Chairman's duties if the Chairman is absent for any reason.

The use of the masculine gender shall be interpreted to cover the feminine.

2. THE TRUST

- 2.1 All business shall be conducted in the name of the Trust.
- 2.2 All funds received in Trust shall be in the name of the Trust as corporate Trustee. In relation to funds held on Trust, powers exercised by the Trust as corporate Trustee shall be exercised separately and distinctly from those powers exercised as a Trust.
- 2.3 The Trust has the functions conferred on it by Schedule 2 of NHS & CC Act 1990 and by its Establishment Order.
- 2.4 Directors acting on behalf of the Trust as a corporate Trustee are acting as quasi-Trustees. Accountability for charitable funds held on Trust is to the Charity Commission and to the Secretary of State for Health. Accountability for non-charitable funds held on Trust is only to the Secretary of State for Health.
- 2.5 The Trust has resolved that certain powers and decisions may only be exercised or made by the Board in formal session. These powers and decisions are set out in "Reservation of Powers to the Board" and have effect as if incorporated into the Standing Orders.

2.6 Composition of the Trust - In accordance with the Establishment Order and Membership and Procedure Regulations the composition of the Board of the Trust shall be:

- *The Chairman of the Trust*
- *5 Non-Executive Directors*
- *5 executive directors including:*
 - *- the Chief Executive (the Chief Officer)*
 - *-the Director of Finance (the Chief Finance Officer)*

and except in the case of a Trust which does not provide services directly to patients; or whose principal function is to provide ambulance or patient transport services.

- *a medical or dental practitioner*
- *a registered nurse or midwife*

2.7 Appointment of the Chairman and Directors - The Chairman and Non-Executive Directors are appointed by the Secretary of State. The Trust shall appoint a committee, whose members shall be the Chairman and Non-Executive Directors of the Trust whose function will be to appoint the Chief Officer as a director of the Trust.

2.8 Terms of Office of the Chairman and Directors - The regulations governing the period of tenure of office of the Chairman and directors and the termination or suspension of office of the Chairman and directors are contained in the Membership and Procedure Regulations.

2.9 Appointment of Deputy-Chairman and Senior Independent Director - For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chairman, the directors of the Trust may appoint a non-executive director from amongst them to be Deputy-Chairman for such a period, not exceeding the remainder of his term as non-executive director of the Trust, as they may specify on appointing him. The non-executive directors can nominate one from amongst them to act as the Senior Independent Director.

2.10 Any non-executive director so elected may at any time resign from the office of Deputy-Chairman or that of Senior Independent Director by giving notice in writing to the Chairman and the directors of the Trust may thereupon appoint another non-executive director as Deputy-Chairman in accordance with paragraph 2.9.

2.11 Powers of Deputy-Chairman - Where the Chairman of an NHS Trust has died or has otherwise ceased to hold office or where he has been unable to perform his duties as Chairman owing to illness, absence from England and Wales or any other cause, references to the chairman in the Schedule to these Regulations shall, so long as there is no Chairman able to perform his duties, be taken to include references to the Deputy-Chairman.

2.12 Joint Directors - Where more than one person is appointed jointly to a post in the Trust which qualifies the holder for executive directorship or in relation to which an executive director is to be appointed, those persons shall become appointed as an executive director jointly, and shall count for the purpose of Standing Order 2.6 as one person.

3. MEETINGS OF THE TRUST

3.1 Admission of the Public and the Press – The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Board but shall be required to withdraw upon the Board resolving as follows:

“That representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be

transacted, publicity on which would be prejudicial to the public interest” (Section 1 (2) Public Bodies (Admission to Meetings) Act 1960)

3.1.1 The Chairman (or Deputy-Chairman) shall give such directions as he thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board’s business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board resolving as follows:

“That in the interests of public order the meeting adjourn for (the period to be specified) to enable the Board to complete business without the presence of the public” (Section 1 (8) Public Bodies (Admission to Meetings) Act 1960).

3.1.2 Nothing in these Standing Orders shall require the Board to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place without the agreement of the Board.

3.2 **Calling Meetings** - Ordinary meetings of the Trust shall be held at such times and places as the Board may determine.

3.3 The Chairman may call a meeting of the Trust at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of directors, has been presented to him, or if, without so refusing, the Chairman does not call a meeting within seven days after such requisition has been presented to him, at the Trust’s Headquarters, such one third or more directors may forthwith call a meeting.

3.4 **Notice of Meetings** - Before each meeting of the Trust, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman or by an officer of the Trust authorised by the Chairman to sign on his behalf shall be delivered to every director, or sent by post to the usual place of residence of such director, so as to be available to him at least three clear days before the meeting.

3.5 Lack of service of the notice on any director shall not affect the validity of a meeting.

3.6 In the case of a meeting called by directors in default of the Chairman, the notice shall be signed by those directors and no business shall be transacted at the meeting other than that specified in the notice.

3.7 Failure to serve such a notice on more than three directors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.

3.8 **Setting the Agenda** - The Trust may determine that certain matters shall appear on every agenda for a meeting of the Trust and shall be addressed prior to any other business being conducted. (Such matters may be identified within these SOs or following subsequent resolution shall be listed in an Appendix to the SOs.)

3.9 A director desiring a matter to be included on an agenda shall make his request in writing to the Chairman or Company Secretary at least 15 working days before the meeting, subject to SO 3.3. Requests made less than 15 working days before a meeting may be included on the agenda at the discretion of the Chairman.

- 3.10 **Chairman of Meeting** - At any meeting of the Trust, the Chairman, if present, shall preside. If the Chairman is absent from the meeting the Deputy-Chairman, if there is one and he is present, shall preside. If both the Chairman and Deputy-Chairman are absent another non-executive director shall be chosen to preside by those other directors present.
- 3.11 If the Chairman is absent from a meeting temporarily on the grounds of a declared conflict of interest the Deputy-Chairman, if present, shall preside. If the Chairman and Deputy-Chairman are absent, or are disqualified from participating, another non-executive director shall be chosen to preside by those other directors present.
- 3.12 **Annual Public Meeting** - The Trust will publicise and hold an annual public meeting in accordance with the NHS Trusts (Public Meetings) Regulations 1991 (SI(1991)482).
- 3.13 **Notices of Motion** - A director of the Trust desiring to move or amend a motion shall send a written notice thereof at least 15 working days before the meeting to the Chairman or Company Secretary, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to SO 3.8.
- 3.14 **Withdrawal of Motion or Amendments** - A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.
- 3.15 **Motion to Rescind a Resolution** - Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the directors who gives it and also the signature of 3 other directors. When any such motion has been disposed of by the Trust, it shall not be competent for any director other than the Chairman to propose a motion to the same effect within 6 months.
The Chairman however may do so if he considers it appropriate.
- 3.16 **Motions** - The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 3.17 When a motion is under discussion or immediately prior to discussion it shall be open to a director to move:
- An amendment to the motion.
 - The adjournment of the discussion or the meeting.
 - That the meeting proceed to the next business. (*)
 - The appointment of an ad hoc committee to deal with a specific item of business.
 - That the motion be now put. (*)
 - A motion resolving to exclude the public and press

* In the case of sub-paragraphs denoted by (*) above, to ensure objectivity, motions may only be put by a director who has not previously taken part in the debate.

No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.

- 3.18 **Chairman's Ruling** - Statements of directors made at meetings of the Trust shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the

meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

3.19 **Voting** - *Every question at a meeting may be determined by a majority of the votes of the directors present and voting on the question and, in the case of any equality of votes, the person presiding may have a second or casting vote. The following members of the Board are voting members:*

Chairman
Chief Executive
All Non-Executive Directors
Director of Finance & Investment
The Medical Director
Chief Operating Officer
Director of Nursing

3.19.1 All questions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the directors present so request.

3.19.2 If at least one-third of the directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each director present voted or abstained.

3.19.3 If a director so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).

3.19.4 In no circumstances may an absent director vote by proxy. Absence is defined as being absent at the time of the vote.

3.19.5 An officer who has been appointed formally by the Board to act up for an executive director during a period of incapacity or temporarily to fill an executive director vacancy, shall be entitled to exercise the voting rights of the executive director. An officer attending the Board to represent an executive director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the executive director. An officer's status when attending a meeting shall be recorded in the minutes.

3.20 **Minutes** - *The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.*

3.20.1 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

3.20.2 Minutes shall be circulated in accordance with directors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public (required by Code of Practice on Openness in the NHS).

3.21 **Joint Directors** - *Where a post of executive director is shared by more than one person:*

(a) *both persons shall be entitled to attend meetings of the Trust:*

(b) *either of those persons shall be eligible to vote in the case of agreement between them:*

- (c) *in the case of disagreement between them no vote should be cast;*
- (d) *the presence of either or both of those persons shall count as one person for the purposes of SO 3.29 Quorum.*

- 3.22 **Suspension of Standing Orders** - Except where this would contravene any statutory provision or any direction made by the Secretary of State, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board are present, including one executive director and one non-executive director, and that a majority of those present vote in favour of suspension.
- 3.23 A decision to suspend SOs shall be recorded in the minutes of the meeting.
- 3.24 A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the directors.
- 3.25 No formal business may be transacted while SOs are suspended.
- 3.26 The Audit Committee shall review every decision to suspend SOs.
- 3.27 **Variation and Amendment of Standing Orders** - These Standing Orders shall be amended only if:
- a notice of motion under Standing Order 3.15 has been given; and
 - no fewer than half the total of the Trust's Non-Executive Directors vote in favour of amendment; and
 - at least two-thirds of the directors are present; and
 - the variation proposed does not contravene a statutory provision or direction made by the Secretary of State.
- 3.28 **Record of Attendance** - *The names of the directors present at the meeting shall be recorded in the minutes.*
- 3.29 **Quorum** - *No business shall be transacted at a meeting of the Trust unless at least one-third of the directors are present including at least one executive director and one non-executive director.*
- 3.30 An officer in attendance for an executive director but without formal acting up status may not count towards the quorum.
- 3.31 If a director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see SO 6 or 7) he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one executive director to form part of the quorum shall not apply where the executive directors are excluded from a meeting (for example when the Board considers the recommendations of the Remuneration Committee).

4. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 4.1 Subject to SO 2.7 and such directions as may be given by the Secretary of State, the Board may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee, appointed by virtue of SO 5.1 or 5.2 below or by a director or an

officer of the Trust in each case subject to such restrictions and conditions as the Board thinks fit.

- 4.2 **Emergency Powers** - The powers which the Board has retained to itself within these Standing Orders (SO 2.5) may in emergency be exercised by the Chief Executive and the Chairman after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and the Chairman shall be reported to the next formal meeting of the Board for ratification.
- 4.3 **Delegation to Committees** - The Board shall agree from time to time to the delegation of executive powers to be exercised by committees or sub-committees, which it has formally constituted. The Board shall approve the constitution and terms of reference of these committees, or sub-committees, and their specific executive powers.
- 4.4 **Delegation to Officers** - Those functions of the Trust which have not been retained as reserved by the Board or delegated to an executive committee or sub-committee shall be exercised on behalf of the Board by the Chief Executive. The Chief Executive shall determine which functions he will perform personally and shall nominate officers to undertake the remaining functions for which he will still retain accountability to the Board.
- 4.5 The Chief Executive shall prepare a **Scheme of Delegation** identifying his proposals which shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board as indicated above.
- 4.6 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Director of Finance or other executive director to provide information and advise the Board in accordance with any statutory requirements.
- 4.7 The arrangements made by the Board as set out in the "Reservation of Powers to the Board and Delegation of Powers" shall have effect as if incorporated in these Standing Orders.

5. COMMITTEES

- 5.1 **Appointment of Committees** - *Subject to SO 2.7 and such directions as may be given by the Secretary of State, the Trust may and, if directed by him/her, shall appoint committees of the Trust, consisting wholly or partly of directors of the Trust or wholly of persons who are not directors of the Trust.*
- 5.2 *A committee appointed under SO 5.1 may, subject to such directions as may be given by the Secretary of State or the Trust appoint sub-committees consisting wholly or partly of members of the committee (whether or not they include directors of the Trust) or wholly of persons who are not members of the Trust committee (whether or not they include directors of the Trust).*
- 5.3 The Standing Orders of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Trust.
- 5.4 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board), as the Board shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 5.5 Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board.

- 5.6 The Board shall approve the appointments to each of the committees, which it has formally constituted. Where the Board determines that persons, who are neither directors nor officers, shall be appointed to a committee, the terms of such appointment shall be determined by the Board subject to the payment of travelling and other allowances being in accordance with such sum as may be determined by the Secretary of State with the approval of the Treasury (see NHS & CC Act Sch 2 para 9).
- 5.7 Where the Trust is required to appoint persons to a committee and/or to undertake statutory functions as required by the Secretary of State, and where such appointments are to operate independently of the Trust such appointment shall be made in accordance with the regulations laid down by the Secretary of State.
- 5.8 The committees and sub-committees established by the Trust are:
- Audit Committee
 - Appointments & Remuneration Committee
 - Charitable Funds Committee

Other advisory groups established to discharge the Board's responsibilities include:

Senior Management Team
Finance Committee
Governance & Quality Committee
Risk Assurance Committee
Performance Review Meetings

- 5.9 **Confidentiality** - A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board or shall otherwise have concluded on that matter.
- 5.9.1 A Director of the Trust or a member of a committee shall not disclose any matter reported to the Board or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board or committee shall resolve that it is confidential.

6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

- 6.1 **Declaration of Interests** - The Code of Accountability requires Board directors to declare interests which are relevant and material to the NHS Board of which they are a director. All existing Board directors should declare such interests. Any Board directors appointed subsequently should do so on appointment.
- 6.2 Interests which should be regarded as "relevant and material" are:
- a) Directorships, including Non-Executive Directorships held in private companies or PLCs (with the exception of those of dormant companies).
 - b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
 - c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
 - d) A position of authority in a charity or voluntary organisation in the field of health and social care.
 - e) Any connection with a voluntary or other organisation contracting for NHS services.

- 6.3 If Board directors have any doubt about the relevance of an interest, this should be discussed with the Chairman or Company Secretary.
- 6.4 At the time Board directors' interests are declared, they should be recorded in the Board minutes. Any changes in interests should be declared at the next Board meeting following the change occurring.
- 6.5 Board directors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Board's annual report. The information should be kept up to date for inclusion in succeeding annual reports.
- 6.6 During the course of a Board meeting, if a conflict of interest is established, the Board director concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 6.7 There is no requirement for the interests of Board director' spouses or partners to be declared. Note however that SO 7 which is based on the Membership and Procedure regulations requires that the interest of directors' spouses and partners in contracts, if living together, should be declared.
- 6.8 **Register of Interests** - The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of directors. In particular the Register will include details of all directorships and other relevant and material interests that have been declared by both executive and non-executive Board directors, as defined in SO 6.2.
- 6.9 These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated.
- 6.10 The Register will be available to the public and the Chief Executive will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.

7. DISABILITY OF DIRECTORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST

The entire text of this section is based on the Membership and Procedure regulations.

- 7.1 Subject to the following provisions of this Standing Order, if a director of the Trust has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Trust at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 7.2 The Secretary of State may, subject to such conditions as he may think fit to impose, remove any disability imposed by this Standing Order in any case in which it appears to him in the interests of the National Health Service that the disability shall be removed.
- 7.3 The Board may, by resolution duly moved seconded and carried, exclude a director from a meeting of the Trust while any contract, proposed contract or other matter in which he has a pecuniary interest, is under consideration. (Under Regulation 20 of the Membership and Procedure regulations Trusts may provide for such exclusion)

- 7.4 Any remuneration, compensation or allowances payable to a director by virtue of paragraph 9 of Schedule 2 to the NHS & CC Act 1990 shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- 7.5 For the purpose of this Standing Order the Chairman or a director shall be treated, subject to SO 7.2 and SO 7.6, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- (a) he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration;
 - or
 - (b) he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;

and in the case of persons living together the interest of one shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.

- 7.6 A director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- (a) of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;
 - (b) of an interest in any company, body or person with which he is connected as mentioned in SO 7.5 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 7.7 Where a director:
- (a) has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
 - (b) the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
 - (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

this Standing Order shall not prohibit him/her from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it without prejudice however to his duty to disclose his interest.

- 7.8 Standing Order 7 applies to a committee or sub-committee of the Trust as it applies to the Trust and applies to any member of any such committee or sub-committee (whether or not he is also a director of the Trust) as it applies to a director of the Trust.

8. STANDARDS OF BUSINESS CONDUCT

- 8.1 **Policy** - Staff must comply with the national guidance contained in HSG(93)5 'Standards of Business Conduct for NHS staff'. The following provisions should be read in conjunction with this document.

- 8.2 **Interest of Officers in Contracts** - If it comes to the knowledge of a director or an officer of the Trust that a contract in which he has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust he shall, at once, give notice in writing to the Chief Executive of the fact that he is interested therein. In the case of married persons, or persons, living together as partners the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 8.3 An officer must also declare to the Chief Executive any other employment or business or other relationship of his, or of a cohabiting spouse or partner, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust. Any interest so declared by staff should be entered in a register of interests of staff.
- 8.4 In relation to the tendering of contracts, the sponsor, members of the Project Team and/or Evaluation Panel shall declare if they are subject to any conflict of interest. The Project Initiation Document and other procurement engagement documents shall reflect if any conflict exists and the actions taken by the Trust to mitigate the risks derivate of those conflicts
- 8.5 **Canvassing of, and Recommendations by, Directors in Relation to Appointments** - Canvassing of directors of the Trust or members of any committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- 8.6 A director of the Trust shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this Standing Order shall not preclude a director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 8.7 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 8.8 **Relatives of Directors or Officers** - Candidates for any staff appointment shall when making application disclose in writing whether they are closely related to any director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.
- 8.8 The directors and every officer of the Trust shall disclose to the Chief Executive any relationship with a candidate of whose candidature that director or officer is aware. It shall be the duty of the Chief Executive to report to the Trust any such disclosure made.
- 8.9 On appointment, directors (and prior to acceptance of an appointment in the case of executive directors) should disclose to the Trust whether they are related to any other director or holder of any office under the Trust.
- 8.10 Where the relationship of an officer or another director to a director of the Trust is disclosed, the Standing Order headed 'Disability of directors in proceedings on account of pecuniary interest' (SO 7) shall apply.
- 8.11 Relationships to which this order applies are those of husband/wife and partner or where either of the two or the spouse of either of them is the son or daughter or grandson or granddaughter or brother or sister or nephew or niece of the other or of the spouse of the other.

9. TENDERING AND CONTRACT PROCEDURE

- 9.1 **Duty to comply with Standing Orders** - The procedure for making all contracts by or on behalf of the Trust shall comply with these Standing Orders (except where SO 3.22 (Suspension of SOs) is applied), and shall be deemed to incorporate the Trusts SFIs.
- 9.2 **EU Directives and National Regulations Governing Public Procurement** - the European Union Directive on the coordination of procedures for the award of public contracts and the national Public Contracts Regulations on their latest version and related legislation promulgated by the Department of Health (DoH) prescribing procedures for awarding all forms of contracts shall have effect as if incorporated in these Standing Orders.
- 9.3 The Trust shall comply as far, as is practicable with the requirements of the NHS Executive "Capital Investment Manual". In the case of management consultancy contracts the Trust shall comply as far as is practicable with NHS Executive guidance "The Procurement and Management of Consultants within the NHS".
- 9.4 Prior to tenders being invited, it must be confirmed that funding approval has been granted by the relevant board or committee; the proposed goods, services or works have been adequately specified; as appropriate and any required statutory approvals have been obtained
- 9.5 **Formal Competitive Tendering** (contract value of £50,000 excluding VAT or more) –
- 9.5.1 **General Applicability**
- The Trust shall ensure that competitive process is undertaken and tenders are invited for:
- the supply of goods, materials and manufactured articles; and
 - for the tendering of services including all forms of management consultancy services (other than specialised services sought from or provided by the DoH); and
 - for the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens); and
 - for disposals.
- 9.5.2 **Exceptions and instances where formal tendering don't need to be applied**
- Formal tendering procedures need not be applied where:
- (a) the estimated expenditure over the life of the contract or income of the projects is, or is reasonably expected to be, less than £4,999 (excluding VAT), Standing Financial Instruction re verbal and written quotation applies instead;
 - (b) the estimated expenditure over the life of the contract or income of the projects is, or is reasonably expected to be, from £5,000 to £49,999 (excluding VAT), Standing Financial Instruction re formal written quotations applies instead
- 9.5.3 Formal tendering procedures may be waived by officers (and agreed with the Director of Procurement and Commercial services) to whom powers have been delegated by the Chief Executive without reference to the Chief Executive (except in (c) to (f) below) where:
- (b) where the supply is proposed under special arrangements negotiated by the DoH in which event the said special arrangements must be complied with; or

- (c) the timescale genuinely precludes competitive tendering. Failure to plan the work properly is not a justification for single tender; or
- (d) specialist expertise is required and is available from only one source; or
- (e) the task is essential to complete the project, AND arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate; or
- (f) there is a clear benefit to be gained from maintaining continuity with an earlier project. However in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering; or
- (g) where provided for in the Capital Investment Manual.

The limited application of the single tender rules should not be used to avoid competition or for administrative convenience or to award further work to a consultant originally appointed through a competitive procedure.

Where it is decided that competitive tendering is not applicable and should be waived by virtue of (c) to (f) above the fact of the waiver and the reasons should be documented and reported by the Chief Executive (if over £100,000) to the Board in a formal meeting, (if under £100,000 the Director of Procurement and Commercial Services will maintain this record). All tenders, including single tenders, should be subject to the appropriate NHS Conditions of Contract.

The waiving of competitive tendering procedures should not be used to avoid competition or for administrative convenience or to award further work to a company originally appointed through a competitive procedure.

9.6 Fair and Adequate Competition

Except where SO 9.5.2, or a requirement under SO 9.5.3, applies, the Board shall ensure that invitations to tender are sent to a sufficient number of firms/individuals to provide fair and adequate competition as appropriate, and in no case less than three firms/individuals, having regard to their capacity to supply the goods or materials or to undertake the services or works required.

9.7 The Board shall ensure that normally the firms/individuals invited to tender (and where appropriate, quote) are among those on approved lists. Where in the opinion of the Director of Finance & Investment it is desirable to seek tenders from firms not on the approved lists, the reason shall be recorded in writing to the Director of Procurement & Commercial Services who will confirm that this is appropriate.

9.8 **Contracting/Tendering procedures** (specific information is contained on Annex A)

9.8.1 **Verbal and written Quotations** - are required under SFI 10.5 and where the intended expenditure or income (for the supplier or the Trust), is not expected to exceed £4,999. Competitive quotes are not required; however, a written quotation must be obtained from the preferred supplier

9.8.2 **Formal Written Quotations** Where quotations are required under SFI 10.5 and where the intended expenditure or income (for the supplier or the Trusts is expected to be between

£5,000 to £49,999 they should be obtained from at least three companies/individuals based on specifications or terms of reference prepared by, or on behalf of, the Board.

- 9.9 Quotations should be in writing and, following the official process lead by the Procurement Department, subject to the appropriate NHS Conditions of Contract. No quotation shall be accepted which will commit expenditure in excess of that which has been allocated by the Trust and which is not in accordance with Standing Financial Instructions except with the authorisation of either the Chief Executive or Chief Financial Officer.
- 9.10 All quotations should be treated as confidential and should be retained for inspection.
- 9.11 The Chief Executive or nominated officer should evaluate the quotations and select that which gives the best value for money (taking into account available weighting criteria). If this is not the lowest then this fact and the reasons why the lowest quotation was not chosen should be recorded. For competitive tendering exercises, a decision will be based on the results of a pre-determined weighting criterion.
- 9.12 Where tendering or competitive quotation is not required** - The Trust shall use the approved supplier for procurement of all goods and services unless the Chief Executive or nominated officers deem it inappropriate. The decision to use alternative sources must be documented.
- 9.15 The Chief Executive shall be responsible for ensuring that best value for money can be demonstrated for all services provided under contract or in-house. The Board may also determine from time to time that in-house services should be market tested by competitive tendering (SO 11).
- 9.16 **Private Finance** - When the Board proposes, or is required, to use finance provided by the private sector the following should apply:
- (a) The Chief Executive shall demonstrate that the use of private finance represents value for money and genuinely transfers risk to the private sector.
 - (b) Where the sum exceeds delegated limits, a business case must be referred to the appropriate Strategic Health Authority for approval or treated as per current guidelines.
 - (c) The proposal must be specifically agreed by the Trust in the light of such professional advice as should reasonably be sought in particular with regard to vires.
 - (d) The selection of a contractor/finance company must be on the basis of competitive tendering or quotations.
- 9.17 **Contracts** - The Trust may only enter into contracts within its statutory powers and shall comply with:
- (a) these Standing Orders;
 - (b) the Trust's SFIs;
 - (c) EU Directives, National regulations and other statutory provisions;
 - (d) any relevant directions including the Capital Investment Manual, Medical Devices Policy and guidance on the Procurement and Management of Consultants;

- (e) such of the NHS Standard Conditions of Contract as are applicable.

Where appropriate contracts shall be in or embody the same terms and conditions of contract as was the basis on which tenders or quotations were invited.

- 9.18 In all contracts made by the Trust, the Board shall endeavour to obtain best value for money. The Director of Procurement and Commercial services shall nominate an officer who shall oversee and manage each contract on behalf of the Trust.
- 9.19 **Personnel and Agency or Temporary Staff Contracts** - The Chief Executive shall nominate officers with delegated authority to enter into contracts for the employment of other officers, to authorise regrading of staff, and enter into contracts for the employment of agency staff or temporary staff.
- 9.20 **Healthcare Service Contracts** - made between two NHS organisations for example with health authorities for the supply of healthcare services, are subject to the provisions of the NHS and Community Care Act 1990, National Health Service Act 2006, and Health and Social Care Act 2012. Such agreements do not give rise to contractual rights or liabilities but a dispute may be referred to Monitor
- 9.21 The Chief Executive shall nominate officers with power to agree the provision of healthcare services with purchasers of healthcare.
- 9.22 **Cancellation of Contracts** - Except where specific provision is made in model Forms of Contracts or standard Schedules of Conditions approved for use within the National Health Service and in accordance with Standing Orders 9.2 and 9.3, there shall be inserted in every written contract a clause empowering the Trust to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if the contractor shall have offered, or given or agreed to give, any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Trust, or for showing or forbearing to show favour or disfavour to any person in relation to the contracts or any other contract with the Trust, or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the contractor), or if in relation to any contract with the Trust the contractor or any person employed by him/her or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts 1889 and 1916 and other appropriate legislation.
- 9.23 **Contracts Involving Funds Held on Trust** - contracts involving charitable funds shall comply with the requirements of the Charities Acts. The same procurement rules will apply to purchases made from charitable funds and all whole life costing needs to be fully understood and agreed by the revenue budget holders prior to the item being purchased.

10. DISPOSALS

Competitive Tendering or Quotation procedures shall not apply to the disposal of:

- (a) any matter in respect of which a fair price can be obtained only by negotiation or sale by auction as determined (or pre-determined in a reserve) by the Chief Executive or his nominated officer;
- (b) obsolete or condemned articles and stores, which may be disposed of in accordance with the policy of the Trust;

- (c) items to be disposed of with an estimated sale value of less than **£5, 000**, this figure to be reviewed annually;
- (d) items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract;
- (e) land or buildings concerning which DoH guidance has been issued but subject to compliance with such guidance.

11. IN-HOUSE SERVICES

11.1 In all cases where the Trust determines that in-house services should be subject to competitive tendering the following groups shall be set up:

- (a) Specification group, comprising the Chief Executive or nominated officer(s) and specialist(s).
- (b) In-house tender group, comprising representatives of the in-house team, a nominee of the Chief Executive and technical support.
- (c) Evaluation group, comprising normally a specialist officer, a supplies officer and a Director of Finance representative. For services having a likely annual expenditure exceeding **£500,000** a non-executive director should be a member of the evaluation team.

11.2 All groups should work independently of each other but individual officers may be a member of more than one group. No member of the in-house tender group may, however, participate in the evaluation of tenders.

11.3 The evaluation group shall make recommendations to the Board.

11.4 The Chief Executive shall nominate an officer to oversee and manage the contract.

12. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

12.1 **Custody of Seal** - The Common Seal of the Trust shall be kept by the Company Secretary in a secure place and procedures for its release shall be maintained.

12.2 **Sealing of Documents** - The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board or of a committee thereof or where the Board has delegated its powers. Unless the Board otherwise direct the seal shall be affixed in the presence of the Chairman, or other Board member, and of the Chief Executive or other designated officer and it shall be attested by them as follows:

“The Seal of the Portsmouth Hospitals NHS Trust was hereunto affixed in the presence of

12.3 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Director of Finance (or an officer nominated by him/her) and authorised and countersigned by the Chief Executive (or an officer nominated by him/her who shall not be within the originating directorate).

12.4 **Register of Sealing** - An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all

sealing shall be made to the Trust at least quarterly. (The report shall contain details of the seal number, the description of the document and date of sealing).

13. SIGNATURE OF DOCUMENTS

- 13.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board shall have given the necessary authority to some other person for the purpose of such proceedings.
- 13.2 The Chief Executive or nominated officers shall be authorised, by resolution of the Board, to sign on behalf of the Trust any agreement or other document (not required to be executed as a deed) the subject matter of which has been approved by the Board or committee or sub-committee to which the Board has delegated appropriate authority.

14. MISCELLANEOUS

- 14.1 **Standing Orders to be given to Directors and Officers** - It is the duty of the Chief Executive to ensure that existing directors and officers and all new appointees are notified of and understand their responsibilities within Standing Orders and SFIs. Updated copies shall be issued to staff designated by the Chief Executive. New designated officers shall be informed in writing and shall receive copies where appropriate of SOs.
- 14.2 **Documents having the authority of Standing Orders** - Standing Financial Instructions and Reservation of Powers to the Board and Delegation of Powers shall have the effect as if incorporated into SOs.
- 14.3 **Review of Standing Orders** - Standing Orders shall be reviewed annually by the Trust. The requirement for review extends to all documents having the effect as if incorporated in SOs.

15 Use of Electronic Tendering (e-tendering)

The Trust, at its discretion may use tendering procedures using electronic means, hereinafter referred to as e.Procurement.

16 Use of e.Procurement

- (i) The Director of Procurement and Commercial services or authorised member of staff, may conduct any tendering exercise or enter into any contract using e-tendering.
- (ii) The Director of Procurement and Commercial services or authorised member of their staff, may only use e-tendering where:
- a) The e-tendering is to take place using a system approved by the Trust
 - b) To do so would not significantly restrict or distort competition.

17 Receipt and Custody

- (i) No tender submitted using e-tendering will be considered unless it is received in the format requested by the Trust in the tender documents and at the electronic address specified by the Trust and unless it is received prior to the deadline for the receipt of tenders, as stated in the tender documents.

(ii) The Director of Procurement and Commercial services or authorised member of their staff, shall ensure that each tender is kept unopened in a single secure electronic mailbox that cannot be opened before the deadline for the receipt of tenders.

(iii) The system used must not allow the identity of the contractor submitting the tender to be revealed prior to the tender being opened after the deadline for the receipt of tenders.

(iv) The Director of Procurement and Commercial services or authorised member of their staff, shall ensure that for each procurement project, the system used shall keep and, if required, produce a record showing the time and date of receipt of all tenders received.

(v) Late tenders or tenders received in the wrong format or not at the notified address will not be considered as specified in the tender documents and they shall be returned to the tenderer with an explanation as to why that tender has not been considered.

18 Opening of Tenders

(i) All tenders for an e-tendering project shall be opened immediately one after the other during one session.

19 Register of Tenders

(i) Details of all tenders, which have been invited using e-tendering, will be entered in the Register of Tenders, held by the Director of Procurement and Commercial services

20 Acceptance

Acceptance of tenders invited using e-tendering shall be made in accordance with Contract Standing Orders

21 Use of Electronic Auctions

The Trust at its discretion may, if the category of procured goods or service is suitable, use an electronic auction to obtain tender submissions. The PASA definition of suitability identifies procurements that are of sufficient value to attract competition, with a requirement that can be accurately specified and for which there is a competitive market. It is important when deciding on a category that a firm specification is available. There must be no ambiguity as to the Trust's requirements prior to the eAuction. It must be possible to compare the products on a like for like basis.

The electronic auction shall be based either solely on prices when the contract is awarded to the lowest price; or on prices and/or on the new values of the features indicated in the specification when the contract is awarded to the most economically advantageous tender.

(a) The selection of the e-Auction service provider shall meet the following standards:

(b) Means of communication must not restrict access to a tendering procedure for potential participants. They must be non-discriminatory, generally available and capable of operation with IT products in general use.

(c) the communication and storage of tenders must protect the integrity of the content.

22. Tenders submitted by post

22.1 Any tenders and tender processes that are requested to be submitted by post will be formally expressed by Procurement prior to any submission and Procurement process and will require Appendix A to be adhered to.

APPENDIX A: TENDERING PROCEDURE

1. Invitation to Tender

- 1.1 From 2016 all procurement exercises shall be undertaken per Electronic means as per European Union regulations. The Trust will use electronic e-tendering system, paper tenders will only be required whenever the e-tendering system is inoperative and the tender needs to be published urgently

The Electronic e-tendering system used and approved by the Trust for EU Tenders enables a more secure and auditable trail and its functionality may differ from the manual tender procedure below. However the principles remain the same and the Director of Procurement and Commercial services will apply the appropriate protocol.

The Director of Procurement and Commercial services or authorised member of staff may conduct any tendering exercise or enter into any contract using e-tendering.

The Director of Procurement and Commercial services or authorised member of their staff, when using e-tendering should:

(i) All invitations to tender shall state the latest date and time for the receipt of tenders.

(ii) All invitations to tender shall state that no tender will be accepted unless:

- Submitted in a closed electronic envelope via the Trust E-tendering tool

- Received by the time and date stated as the latest time for receipt

(iii) Every tender for goods, materials, services or disposals shall embody such of the NHS Standard Contract Conditions as are applicable.

(iv) The identity of firms being invited to tender shall not be revealed to other tenderers for that contract.

(v) Every tender must have given, or give a written undertaking, not to engage in collusive tendering or other restrictive practice.

- 1.2 Every tender for building and engineering works, except for maintenance work only where Estmancode guidance should be followed, shall embody or be in the terms of the current edition of the appropriate Joint Contracts Tribunal (JCT) or Department of the Environment (GC/Wks) standard forms of contract amended to comply with Concode. When the content of the works is primarily engineering, tenders shall embody or be in the terms of the General Conditions of Contract recommended by the Institution of Mechanical Engineers and the Association of Consulting Engineers (Form A) or, in the case of civil engineering work, the General Conditions of Contract recommended by the Institution of Civil Engineers. The standard documents should be amended to comply with Concode and, in minor respects, to cover special features of individual projects. Tendering based on other forms of contract may be used only after prior consultation with the DoH.

2. Receipt, Safe Custody and Record of Formal Tenders

2.1 Receipt and Custody

(i) No tender submitted using e-tendering will be considered unless it is received in the format requested by the Trust in the tender documents and at the electronic address

specified by the Trust and unless it is received prior to the deadline for the receipt of tenders, as stated in the tender documents.

(ii) The Director of Procurement and Commercial services or authorised member of their staff, shall ensure that each tender is kept unopened in a single secure electronic mailbox that cannot be opened before the deadline for the receipt of tenders.

(iii) The system used must not allow the identity of the contractor submitting the tender to be revealed prior to the tender being opened after the deadline for the receipt of tenders.

(iv) The Director of Procurement and Commercial services or authorised member of their staff, shall ensure that for each procurement project, the system used shall keep and, if required, produce a record showing the time and date of receipt of all tenders received.

(v) Late tenders or tenders received in the wrong format or not at the notified e-tendering system will not be considered as specified in the tender documents and an explanation as to why that tender has not been considered shall be sent to the tenderers.

2.2 Opening of Tenders

All tenders for an e-tendering project shall be opened immediately one after the other during one session.

2.3 Register of Tenders

Details of all tenders, which have been invited using e-tendering, will be entered in the Register of Tenders, held by the Director of Procurement and Commercial services.

3. Opening Formal Tenders

(i) As soon as practicable after the date and time stated as being the latest time for the receipt of tenders, they shall be opened by designated senior officers of the Trust as set out below.

Paper tenders must be delivered under seal to the Trust Offices and opened and recorded by two Trust Directors or by one Trust Director and the Deputy Trust Secretary. Sealed tenders must be opened by two officers of the Trust drawn from the Director of Corporate Affairs and Trust Secretary, the Deputy Trust Secretary and Trust Directors (electronic process).

(ii) The involvement of Finance Directorate staff in the preparation of a tender proposal will not preclude the Chief Financial Officer from serving as one of the designated Directors to open tenders.

(iii) The Director of Procurement and Commercial services will count as a Director for the purposes of opening tenders.

(iv) Every tender received shall be marked with the date of opening and signed by those present at the opening. (if paper tenders)

4. Retention of tender documentation

4.1 The returned tender and responses, the specification and evaluation notes and Minutes must be retained for audit purposes for the financial year in which the tender exercise falls plus nine financial years.

Internal and External Audit will periodically review all aspects of procurement, including the choice of companies invited to tender and the operation of these procedures. The process

may also be challenged by unsuccessful bidders. It is therefore vital that complete documentation demonstrating the decision making process is produced and retained.

4.2 A permanent record shall be maintained to show for each set of competitive tender invitations despatched, which would be maintained on the trusts e-tendering tool:

- (a) the names of firms/individuals invited;
- (b) the names of, and the number of, firms/individuals from which tenders have been received;
- (c) the total price(s) tendered;
- (d) closing date and time;
- (e) date and time of opening;

4. Admissibility and Acceptance of Formal Tenders

4.1 In considering which tender to accept, if any, the designated officers shall have regard to whether value for money will be obtained by the Trust and whether the number of tenders received provides adequate competition, to be reflected on the evaluation criteria. In cases of doubt they shall consult the Chief Executive.

4.2 Tenders received after the due time and date may be considered only if the Chief Executive or nominated officer decides that there are exceptional circumstances, e.g. where significant financial, technical or delivery advantages would accrue, and is satisfied that there is no reason to doubt the bona fides of the tenders concerned. The Chief Executive or nominated officer shall decide whether such tenders are admissible and whether re-tendering is desirable. Re-tendering may be limited to those tenders reasonably in the field of consideration in the original competition. If the tender is accepted the late arrival of the tender should be reported to the Board at its next meeting.

4.3 Technically, late tenders (i.e. those despatched in good time but delayed through no fault of the tenderer) may, at the discretion of the Chief Executive, be regarded as having arrived in due time.

4.4 Incomplete tenders (i.e. those from which information necessary for the adjudication of the tender is missing) and amended tenders (i.e. those amended by the tenderer upon his own initiative either orally or in writing after the due time for receipt) should be dealt with in the same way as late tenders under Section 4.2.

4.5 Where examination of tenders reveals errors, which would affect the tender figure, the tenderer is to be given details of such errors and afforded the opportunity of confirming or withdrawing his offer.

4.6 Necessary discussions with a tenderer on the contents of his tender, in order to elucidate technical points etc, before the award of a contract, need not disqualify the tender. Any written amendments are to be submitted via the e-tendering portal with words "Tender Amendment" followed by the subject to which it relates and the latest date and time for the receipt of such tender amendment as set by the Trust. All such tender amendment envelopes to be handled in accordance with Sections 2 and 3 above.

4.7 While decisions as to the admissibility of late, incomplete, or amended tenders are under consideration and while re-tenders are being obtained, the tender documents shall remain strictly confidential and kept in safekeeping by an officer designated by the Chief Executive.

- 4.8 When the number of tenders received is less than the recommended minimum the Chief Executive shall decide whether re-tendering is desirable except in those instances in which he has been involved in tendering in which case the Chief executive and Finance Director shall decide. Where only one tender/quotation is received the Trust shall, as far as practicable, ensure that the price to be paid is fair and reasonable.
- 4.9 A tender other than the most advantageous economic offer shall not be accepted unless for good and sufficient reason the Board decides otherwise and records that decision in their minutes and in the record referred to in 4.2 above.
- 4.10 Where the form of contract includes a fluctuation clause all applications for price variations must be submitted in writing by the tenderer and shall be approved by the Chief Executive or nominated officer.
- 4.11 All tenders should be treated as confidential and should be retained for inspection.

Where post tender negotiations are carried out in person they should be conducted before a witness and all consequent amendments to tender prices are to be recorded in writing.

5 Use of Electronic Auctions or Dynamic Purchasing Systems

The Trust at its discretion may, if the category of procured goods or service is suitable, use an electronic auction to obtain tender submissions. The PASA definition of suitability identifies procurements that are of sufficient value to attract competition, with a requirement that can be accurately specified and for which there is a competitive market. It is important when deciding on a category that a firm specification is available. There must be no ambiguity as to the Trust's requirements prior to the eAuction. It must be possible to compare the products on a like for like basis.

The electronic auction shall be based either solely on prices when the contract is awarded to the lowest price; or on prices and/or on the new values of the features indicated in the specification when the contract is awarded to the most economically advantageous tender.

- (a) The selection of the e-Auction service provider shall meet the following standards:
- (b) Means of communication must not restrict access to a tendering procedure for potential participants. They must be non discriminatory, generally available and capable of operation with IT products in general use.
- (c) the communication and storage of tenders must protect the integrity of the content.

22. Tenders submitted by post

- 22.1 Any tenders and tender processes that are requested to be submitted by post will be formally expressed by Procurement prior to any submission and Procurement process.